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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Docket No. AB 1043 (Sub-No. 1)

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MONTREAL, MAINE & ATLANTIC RAILWAY, LTD.--  
DISCONTINUANCE OF SERVICE AND ABANDONMENT--  
IN AROOSTOOK AND PENOBSCOT COUNTIES, MAINE

---

REPLY OF MONTRÉAL, MAINE & ATLANTIC RAILWAY,  
LTD. IN OPPOSITION TO "MOTION TO COMPEL"

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Dated: April 5, 2010

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**REPLY OF MONTRÉAL, MAINE & ATLANTIC RAILWAY,  
LTD. IN OPPOSITION TO "MOTION TO COMPEL"**

On April 1, 2010, Irving Woodlands LLC and Irving Forest Products, Inc.

("Irving") filed a Motion to Compel in which Irving requests the Board to direct Montréal, Maine & Atlantic Ry., Ltd. ("MMA") to answer certain interrogatories and produce certain documents. For the reasons set forth below, the Board should deny the Motion.

**I. Discovery Should be Limited in Abandonment Cases Generally  
and in this Case in Particular.**

As a general proposition, the Board has noted that discovery in abandonment cases "is typically disfavored . . . due not only to the strict time constraints imposed by Congress, but also because only rarely can discovery be justified in an abandonment proceeding." Central Railroad Co. of Indiana--Abandonment Exemption--In Dearborn, Decatur, Franklin, Ripley, and Shelby Counties, IN, STB Docket No. AB-459 (Sub-No. 2X), decision served April 1, 1998. To be sure, "contested discovery may be granted

under appropriate circumstances in particular abandonment proceedings, but only when the party seeking discovery shows that the information sought is relevant and might affect the result of the case, and that it ought to be obtained through discovery rather than some other means." SWKR Operating Co.--Abandonment Exemption--In Cochise County, AZ, STB Docket No. AB-441 (Sub-No. 2X), decision served February 14, 1997. Stated somewhat differently, a discovery request is relevant if "the information might be able to affect the outcome of a proceeding" and should be allowed only if it is not "unduly burdensome in relation to the likely value of the information sought." Waterloo Railway Co.--Adverse Abandonment--Lines of Bangor and Aroostook Railroad Co. and Van Buren Bridge Company in Aroostook County, ME, STB Docket No. AB-124 (Sub-No. 2), decision served May 6, 2003. As shown below, the discovery that Irving asks the board to compel does not meet these criteria.

The scope of Irving's discovery is expansive, covering 26 interrogatories and 28 document requests. Based upon the limited issues raised by Irving in the Motion, it is evident that MMA has satisfied these discovery requests to a large degree. Furthermore, MMA has responded to Irving's informal discovery requests by providing various spreadsheets and formulas in formats other than the formats that were included in the application in order to facilitate analysis by Irving's experts.

Although Irving attempts to characterize its discovery requests as being relevant to the abandonment application and the statutory criteria, a document recently published by Irving gives credence to the thought that Irving might have other motivations. The document, which is entitled "The Aroostook Railroad" and is dated March 26, 2010, a copy of which is attached, was provided to certain members of the Maine Legislature.

The Legislature is currently considering legislation for a bond issue in order to raise funds to buy the lines that MMA is seeking to abandon. In the document, Irving suggests that the State should acquire the MMA line for \$19 million, provide \$20 million for rehabilitation and allocate \$3 million a year for maintenance of the line. In addition, the State would be expected to "ensure competitive running rights and switch rates to interconnections", which is a euphemism for acquiring forced access over MMA lines, in addition to the lines to be abandoned, in order to connect the abandonment lines directly with Canadian National and the Pan Am system. Irving's preferred operator of the line is Eastern Maine Ry., a rail carrier that is part of the Irving empire of companies and connects with MMA at Brownville Junction, Maine.

This interest on the part of Irving in becoming the operator of the MMA line may explain the wide-ranging nature of Irving's discovery requests and the lack of relevance of many of the requests. For example, document requests 7, 8 and 10 focus on the MMA line between Madawaska and Van Buren, which is not proposed for abandonment (and which is discussed more fully in connection with related document request 20 and interrogatory 25 in Section II below). In document requests 15 and 16, Irving asks for documents relating to MMA's due diligence and valuation of MMA in 2003 when MMA purchased its rail properties. Information of this nature could be interesting to a party seeking to operate the MMA lines, but the information is not directly relevant to any issues in this abandonment case.

## **II. Information Concerning the Madawaska Line is Not Relevant.**

In interrogatory 25, as it has been narrowed by Irving from its original scope, Irving seeks information concerning the number of carloads of logs, woodchips and

woodpulp originating on the MMA line between Madawaska and Van Buren and terminating outside of Maine. The Madawaska line is not part of the abandonment application, and Irving has no facility on the Madawaska line. Data, including numbers of cars and commodities, concerning any traffic originating or terminating on the abandonment lines and moving over the Madawaska line or traffic that was overhead to both the Madawaska line and the abandonment line, were included in the application. Irving has a sawmill at St. Leonard, New Brunswick, the point at which the Madawaska line connects to the Canadian National system. Presumably, Irving knows how many carloads of logs, woodchips and woodpulp move to or from its sawmill over the Madawaska line. Thus, the information that Irving seeks is either not relevant to the abandonment case, or any information that is relevant has already been provided or is readily available to Irving.

In connection with document request 20, Irving also argues that the traffic data for the Madawaska line is relevant for purposes of the "stranded segment" argument. Without the benefit of any citation, Irving asserts that traffic originations and operations on the Madawaska line bear upon the question whether it is a stranded segment. To the contrary, however, the question whether the Madawaska line is stranded turns solely on the question whether it will remain connected to the rail network after the abandonment. MMA believes that the line will not be stranded, but in any event details concerning traffic originations and operations on the Madawaska line will not affect the determination by the Board whether the Madawaska line is in fact stranded.

Even if operations on the Madawaska line after abandonment were relevant, Irving has sufficient information to evaluate the situation. MMA explained how it would

operate the Madawaska line in its reply in opposition (filed March 15, 2010) to the motion to reject the application based on the stranded segment theory. Indeed, Irving has all of the information that MMA has at this time concerning such post-abandonment operations. Furthermore, after the abandonment there will be no Irving traffic handled on the Madawaska line. Such information may be of interest to an entity that wishes to operate on the Madawaska line, but it is certainly not relevant to this abandonment case.

### **III. Confidential Negotiations Should Not be Disclosed.**

Irving has requested documents (document requests 2, 17-19) relating to discussions between MMA and parties that have expressed potential interest in purchasing portions of the right-of-way after abandonment, claiming that such documents support the net liquidation value set forth in the application. As shown below, Irving has not established any need for such documents, and MMA has properly resisted such requests on the basis of the confidential and sensitive nature of such documents.

Contrary to Irving's contention, any such documents were not the basis for the valuation of the real estate. As the Board is aware, the application includes alternative valuations of the real estate that comprises the line to be abandoned. One appraisal is done on the across the fence methodology that is used in most abandonment cases. The other appraisal is done on a corridor methodology, recognizing the Board decisions that permit the use of a corridor methodology if there is a market for such sales. The real estate appraisals themselves are the basis for the net liquidation value of the real estate. Any documents relating to potential sales, as described in the Verified Statement of Richard M. Gottlieb and in the application, support the proposition that there is a market

for sales of the line as corridors. Documents reflecting potential sales are not the basis for the net liquidation values determined by the appraisals.

MMA understands that there is a protective order in this case that ostensibly would prevent the disclosure of information in any such documents. Realistically, however, even with a protective order, there is nonetheless a risk that information concerning sensitive, confidential discussions about potential purchase of the abandoned rights-of-way could be divulged to the detriment of MMA. The risk of disclosure, whether inadvertently or as a consequence of the highly public nature of the debate concerning the potential acquisition of the line by the State, is particularly plausible in this case. The state has expressed an interest in purchasing the entire line, and other interested parties may yet come forward with offers to purchase intact corridors for continued rail service or, after abandonment, for nonrail purposes. In these circumstances, such documents should not be produced; the risk of harm to MMA outweighs Irving's need for the information.

Irving will not be prejudiced by not having access to any such documents. Irving will be able to take issue with the net liquidation values set forth in MMA's appraisals if it chooses to do so. Furthermore, if Irving wishes to make an offer to purchase the line, and there is a disagreement concerning price, the question whether to provide such documents could be revisited at that time.

#### **IV. Irving Already Has Adequate Information Concerning the RRIF Loan.**

Irving has also directed its discovery requests (interrogatories 23 and 24 and document request 22) to the loan obtained by MMA pursuant to the Railroad Rehabilitation and Improvement Financing ("RRIF") program. As explained below, the

issue appears to be one of understanding the information already provided rather than an appropriate subject of a motion to compel.

Irving initially asked whether the loan had resulted in the creation of a lien on the line to be abandoned and for the payment schedule under the loan. In addition, Irving requested production of a variety of documents relating to the loan. In response to the interrogatory, MMA stated that its "system in the United States is encumbered" by the loan. Irving asked for "clarification" whether the encumbrance applied to the lines proposed for abandonment. MMA replied that the "MMA system in the United States includes the lines to be abandoned". The syllogistic conclusion, which seems unambiguous, is that the abandonment lines are subject to the lien of the RRIF loan.

Given the confirmation that the avoidable loss analysis did not include any interest relating to the RRIF loan, MMA understands that Irving is no longer seeking the loan repayment schedule. Furthermore, MMA has concluded that it is willing to provide Irving with a copy of the loan documents.

**V. MMA Has Fully Answered Questions Concerning Mr. McGonigle's Statements.**

Pursuant to interrogatory 17-19, Irving is seeking additional clarification and documents relating to certain statements in the Verified Statement of Joseph R. McGonigle. MMA explained that Mr. McGonigle's experience, personal knowledge and observation were the bases for statements to the effect that "there appears to be sufficient trucking capacity" to handle business that would be diverted from rail and that "the current volumes of traffic on the roads are at levels that could accommodate additional truck traffic" after an abandonment. MMA also explained, in a letter dated March 30, 2010, in response to Irving's letter of March 26, 2010, that Mr. McGonigle "consulted



several public documents, including documents available at [several specifically named] websites".

Irving contends that the state of the record is "ambiguous", because Irving does not know whether documents in addition to those mentioned were reviewed by Mr. McGonigle. Contrary to Irving's contention, it has a complete, unambiguous answer. The essence of the foundation for the statements is, as originally stated, Mr. McGonigle's experience, personal knowledge and observation, all of which provide an adequate basis for the statements. The assertions should be viewed in the context of his Verified Statement, which provides details concerning the current use of trucks by all customers served by the lines to be abandoned and describes the nature of the trucking market. To the best of his recollection, the universe of documents that he reviewed in connection with his statements have been listed. In any event, if Irving disagrees with Mr. McGonigle's statements, Irving has the ability to produce its own witnesses or evidence on these subjects.

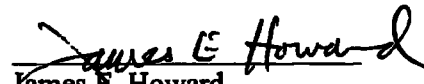
Finally, Irving continues to request additional information (interrogatory 19) relating to Mr. McGonigle's "estimate" that MMA's rail market share compared to trucks amounts to less than 10% of the overall shipping activity in the area. As explained in MMA's answer to the interrogatory, the basis for the estimate was Mr. McGonigle's experience and personal knowledge. MMA has also explained, in its letter dated March 30, 2010, that Mr. McGonigle consulted certain specific public documents and based his estimate in part on the recognition that MMA does not participate at all in large segments of the transportation market in the area, such as harvesting activities with respect to potatoes, grain and timber. Irving apparently believes that there are written calculations

that show the derivation of the 10% estimate. This is not the case. As explained already, the figure is an estimate based upon a variety of factors. The actual MMA market share may be more or less than 10%, but it seems clear that no issue in this case depends upon whether the actual percentage is 8% or 12%. The estimate should be accepted for what it is--an estimate that indicates that MMA's rail service constitutes a very small portion of the transportation activity in the relevant area.

Respectfully submitted,

MONTREAL, MAINE &  
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Attorneys for Montreal, Maine & Atlantic Railway, Ltd.

Dated: April 5, 2010

Certificate of Service

I hereby certify that I have served the foregoing Reply as of this 5th day of April, 2010 by causing copies to be sent to the parties indicated below by e-mail to those with e-mail addresses listed and by United States mail, postage prepaid, to the others:

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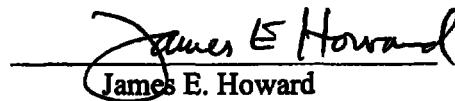
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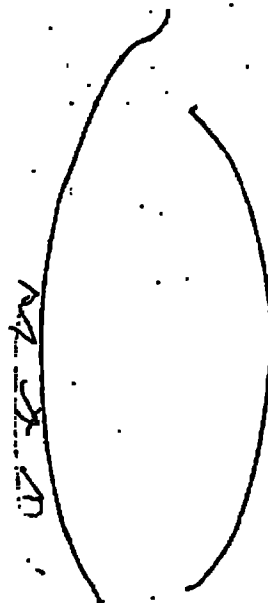
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# THE AROOSTOOK RAILROAD

MARCH 26, 2010

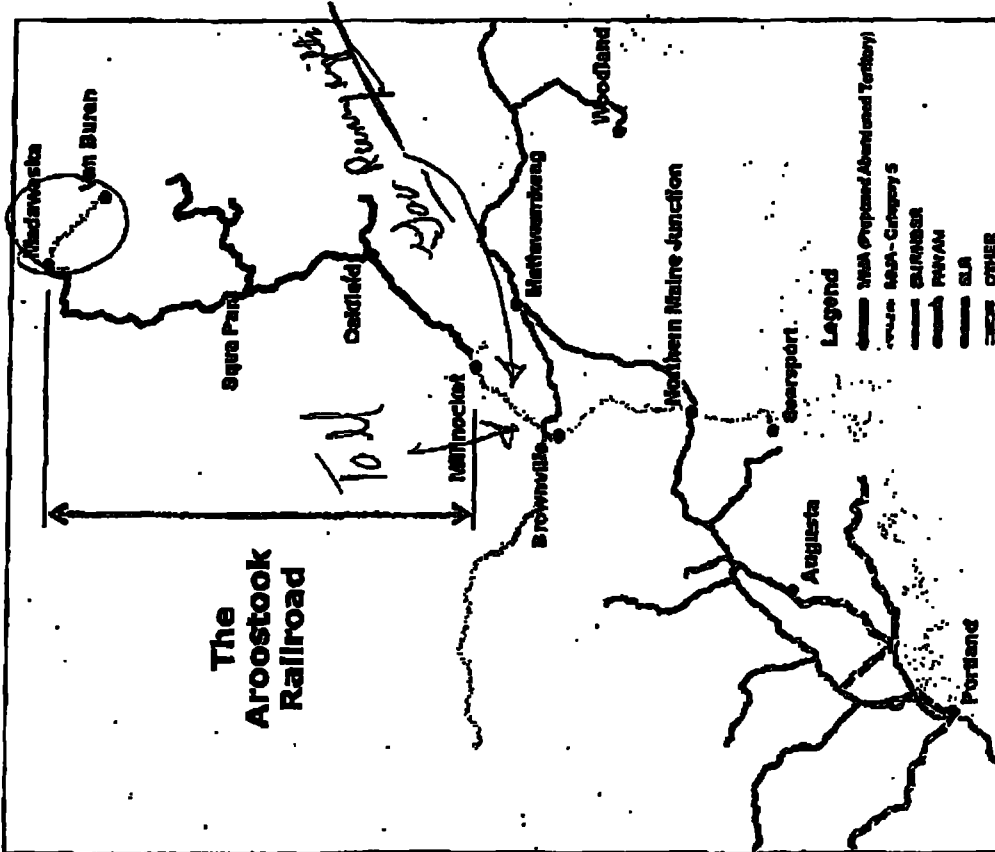


# THE AROOSTOOK RAILROAD - MAINE'S CONNECTION TO THE WORLD

The rail line proposed for abandonment is critical to the economy of northern Maine:

- > Approximately 600,000<sup>1</sup> tonnes of goods were shipped on this line in 2009
- > The most significant employers in the region depend on rail to transport raw materials & finished products at competitive rates
- > Future economic development in the region will be highly dependent on freight rail service

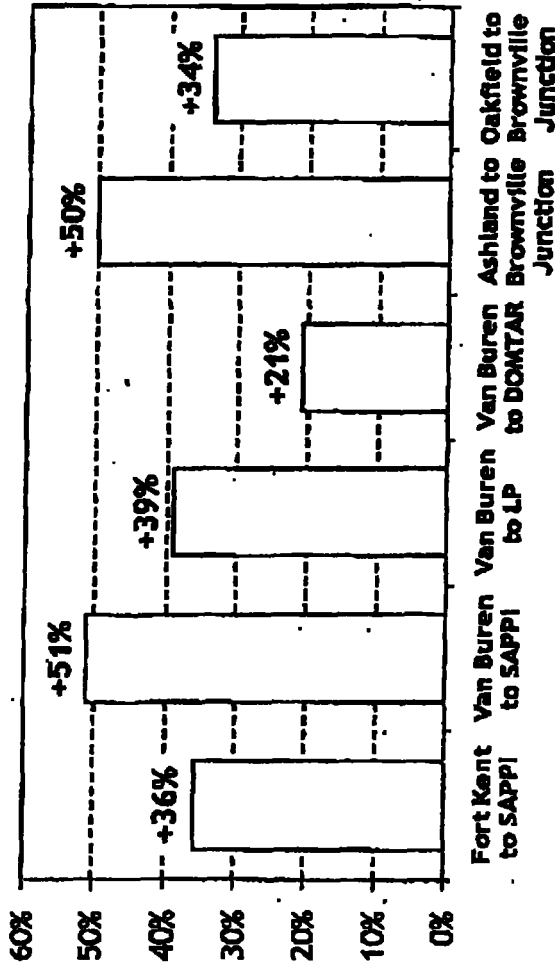
<sup>1</sup> As reported in the MM&A's filing with the Surface Transportation Board.



# THE IMPACT OF RAIL CLOSURE IN NORTHERN MAINE

## AN ILLUSTRATIVE EXAMPLE:

### % Increase in Transportation Costs for Common Routes (\$/Ton)<sup>1</sup>



#### NOTE:

In the absence of rail service, it is likely trucking rates will increase considerably from current levels.

- <sup>1</sup> Estimated cost of transporting goods via truck instead of train assuming today's fuel prices and no tangible cost for greenhouse gas emissions.
- <sup>2</sup> As reported in the MM&A's filing with the Surface Transportation Board.

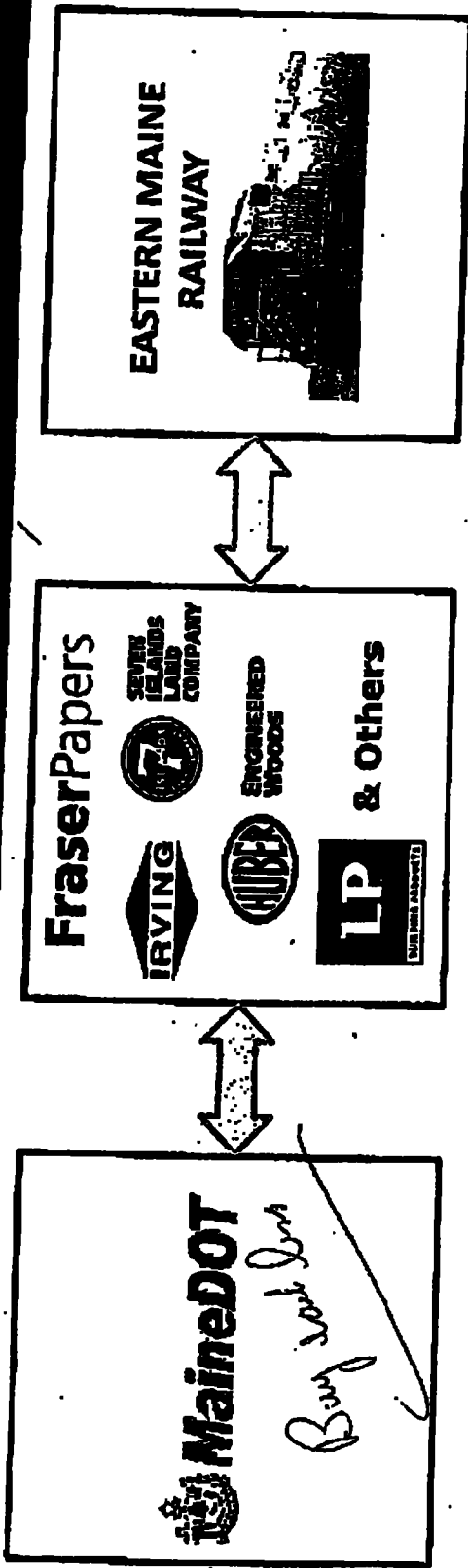
The loss of rail service will raise the utilization of trucks, increasing the average cost by **30+%**:

> 30,000 additional truck loads<sup>2</sup> will be added to Maine's roadways leading to:

- Increased safety risks
- Increased congestion & road maintenance
- Increased greenhouse gas emissions

> Manufacturers, employing over 2,000 people, may face closure in response to the increased costs

# OPTION A - SINGLE SERVICE PROVIDER SOLUTION



## STATE OF MAINE:

1. Provide rail line to shippers under a long term Lease Agreement
2. Provide capital for refurbishment & fund track maintenance for the first 3 years
3. Ensure competitive running rights and switch rates to interconnections
4. Retain common carrier status

## RAIL USERS, LLC:

1. Establish a formal legal structure composed of rail users
2. Dedicated annual freight commitment to rail line
3. Provision of initial working capital for rail line operation

## RAIL OPERATOR:

1. Independent provision of rail service on a cost recovery basis
2. Commitment of efficient & responsive operation to all users

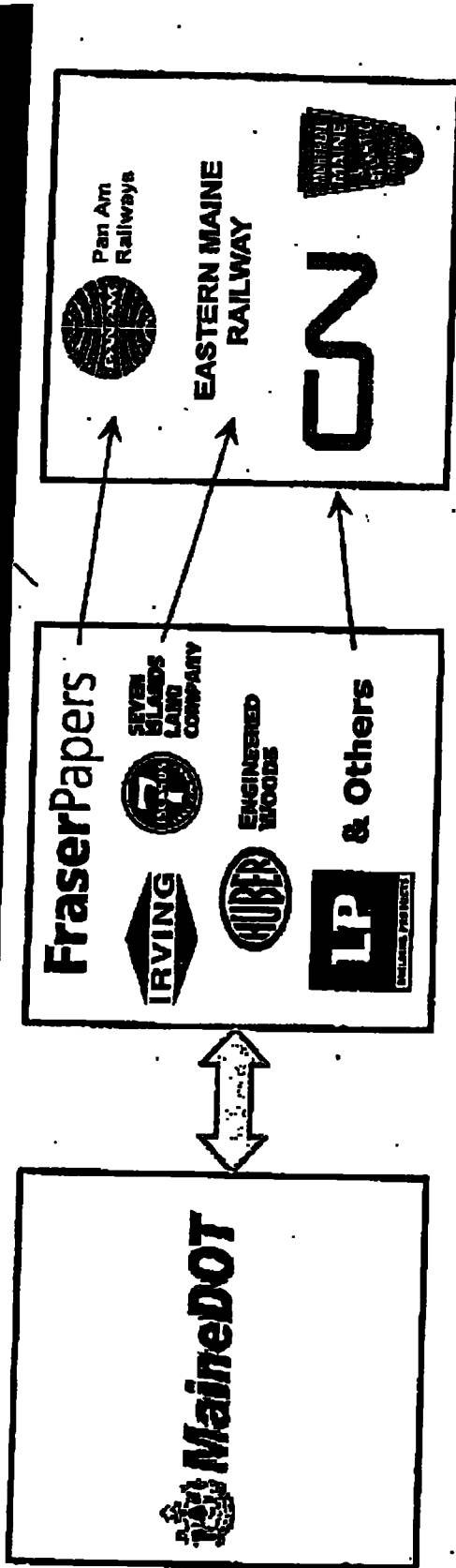
*Good cost of capital  
Saves \$1.1M per year*

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# OPTION B - MULTIPLE SERVICE PROVIDER SOLUTION



## STATE OF MAINE:

1. Provide rail line access to any shipper on a running rights basis
2. Provide capital for refurbishment & ongoing track maintenance from running rights revenue
3. Ensure competitive running rights and switch rates to interconnections
4. Retain common carrier status

## RAIL USERS GROUP:

1. Establish a coalition of rail users
2. Dedicated annual freight commitment to rail line
3. Ability to contract with any rail service provider

*Comp Jd*  
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## RAIL OPERATOR:

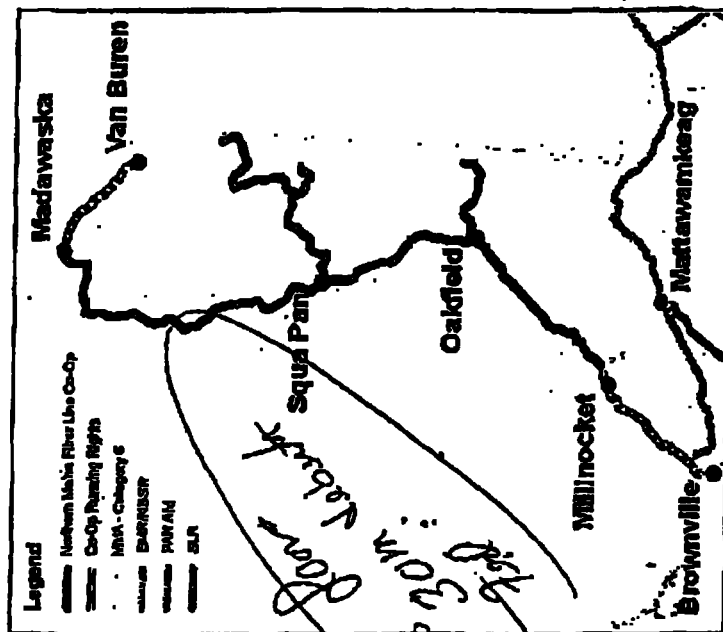
1. Provision of rail service to customers on an individual contract basis
2. Payment of running rights to State

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## ESSENTIAL SUPPORT FROM THE STATE OF MAINE

- Deferred maintenance has lead to significant deterioration of the rail line.
- Operation at current volumes on a cost recovery basis requires financial support:
  - Initial refurbishment of the main & branch lines to permit 25-30 mph minimums, at a cost of approximately \$20MM
  - Ongoing Rail Maintenance:
    - i. The single service provider requires a minimum 3 year commitment by the State, estimated at \$3MM/yr after refurbishment capital
    - ii. The alternative would have, the State retain the maintenance responsibility (contracted to a 3rd party), funded by running rate revenues
- Competitive running rights & switch rates are essential to the line's viability.
- Responsibility for common carrier status must be retained by the State.



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## THE PRINCIPLES OF RAIL USERS, LLC

- Rail users are united in their need for sustainable, long-term freight rail service in northern Maine
- A Rail Users Group, with participation open to all Shippers, would provide:
  - Working capital to fund the initial start up of 3<sup>rd</sup> party rail operation, estimated to be \$2 - \$3 MM
  - The minimum volume necessary to support operating cost recovery of the rail service (excluding state sponsored maintenance in the first 3 years)
- 3<sup>rd</sup> party operation would be provided on a transparent, cost recovery basis, with service level commitments to the Rail Users Group
- Shippers are all equally motivated to increase freight rail volumes, leading to lower per unit transportation costs

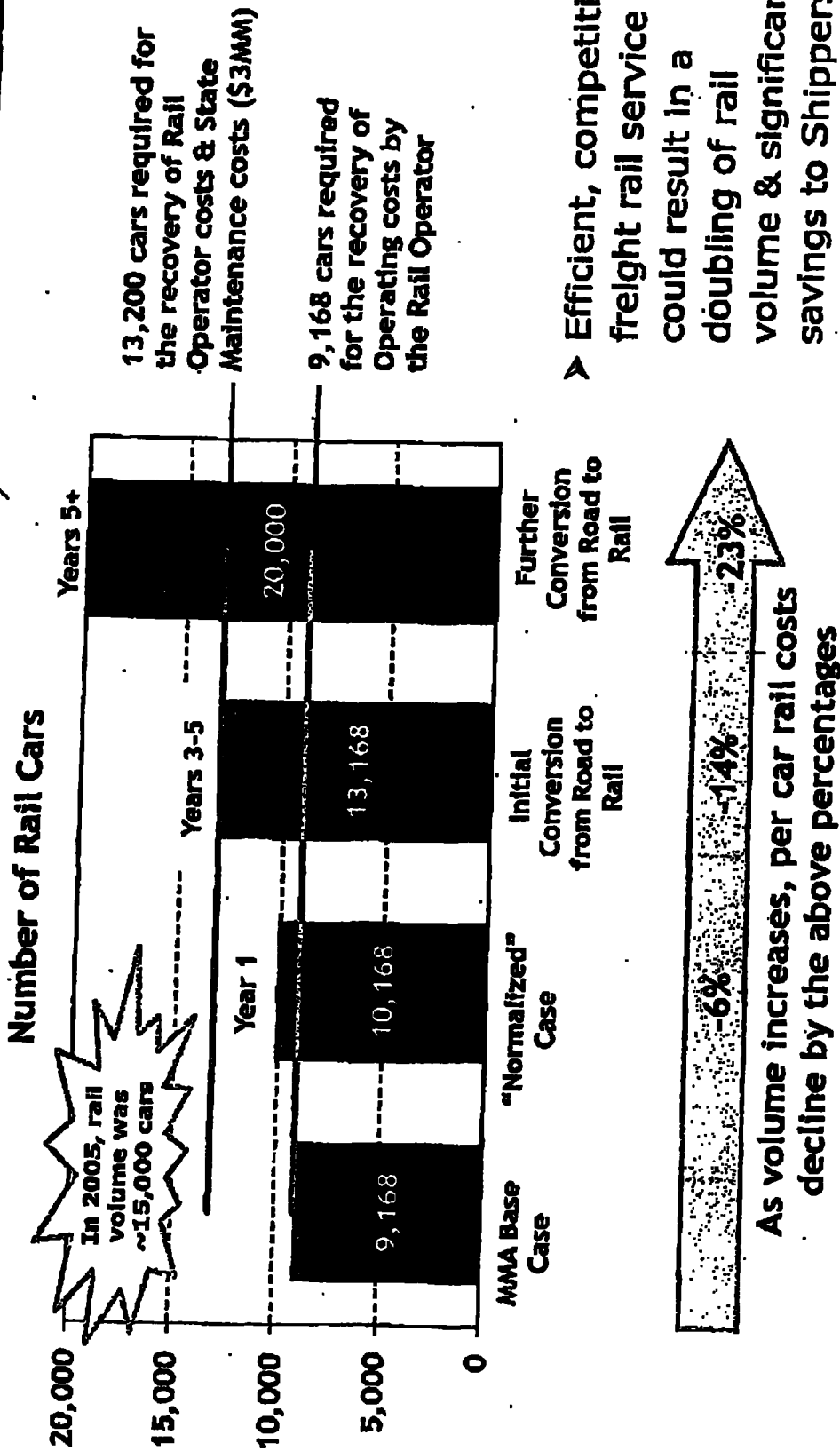
## **RUNNING RIGHTS UNDER MULTIPLE SERVICE PROVIDERS**

- Running rights for multiple service providers could be established at a fair rate (\$0.30/car/mile)
- This structure would permit open access by any rail operator to utilize the railroad on behalf of any client
- The revenue would flow to the State, and could be used to offset maintenance costs
- Initially, running rights will provide enough revenue to offset approximately 1/3 of the \$3MM annual track maintenance, with this revenue increasing as volume increases and service levels improve

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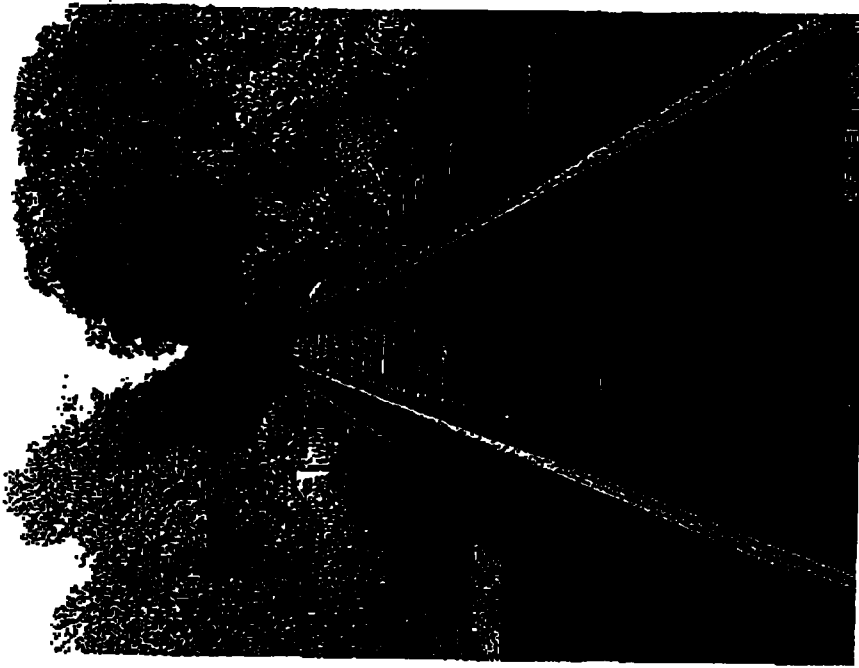


# THE EVOLUTION OF FREIGHT RAIL VOLUME



## **BENEFITS OF IMPROVED RAIL SERVICE IN NORTHERN MAINE**

- Adds stability for northern Maine manufacturers and shippers
- Stems job losses and creates an opportunity for job creation
- Basis for future investment in the region and potential to increase the tax base
- Opportunity to link the abundant resources of the North with mills and customers throughout Maine and the region



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## NEXT STEPS

- Commitment from the State for political and financial support of this proposal:
  - Long term lease or rail access- \$19 MM (Purchase)
  - Line refurbishment - \$20 MM
  - Maintenance costs - \$3 MM/year
  - Running rights - \$0.30/car/mile
  - Switch Rates - \$185
  - Retain common carrier status
- Collaboration of shippers on the creation of a Rail Users Group and the commitment of essential rail volume
- Establish terms for the provision of third party freight rail service

"The public sector and the private freight transportation community must advance public policy options that improve the capacity, productivity, and security of the freight-rail system..."

- *Freight Rail Report,*  
American Association of  
State Highway and  
Transportation Officials

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